

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: October 28, 2020

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Mr. Roy Christopher West
U.S.P. Thomson
P.O. Box 1002
Thomson, IL 61285

Re: Case No. 20-1253, *In re: Roy West*
Originating Case No. : 2:14-cv-14748 : 2:06-cr-20185-1

Dear Sir or Madam,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/C. Anthony Milton
Case Manager
Direct Dial No. 513-564-7026

cc: Mr. David J. Weaver

Enclosure

No mandate to issue

No. 20-1253

UNITED STATES COURT OF APPEALS
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In re: ROY CHRISTOPHER WEST,

Movant.

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O R D E R

Before: McKEAGUE, DONALD, and READLER, Circuit Judges.

Roy Christopher West, a federal prisoner proceeding *pro se*, moves this Court for an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. §§ 2244(b), 2255(h). The government opposes the motion.

A jury convicted West of conspiring to use interstate commerce facilities in the commission of a murder-for-hire, in violation of 18 U.S.C. § 1958. The district court sentenced him to life imprisonment. This court affirmed. *United States v. West*, No. 11-2080 (6th Cir. Aug. 1, 2013) (order).

West filed a § 2255 motion, which the district court denied. This Court denied West a certificate of appealability. *West v. United States*, No. 18-1441 (6th Cir. Sept. 11, 2018) (order).

West has filed a motion and corrected motion for authorization to file a second or successive § 2255 motion, arguing that his conviction for violating § 1958 does not qualify as a crime of violence under 18 U.S.C. § 924(c)(3)(B) in light of the Supreme Court’s decision in *United States v. Davis*, 139 S. Ct. 2319, 2336 (2019), which held that § 924(c)(3)(B)’s “residual clause” is unconstitutionally vague. He also relies on the Court’s decisions in *Sessions v. Dimaya*, 138 S. Ct. 1204, 1224 (2018) (invalidating the “residual clause” of 18 U.S.C. § 16(b)), and *Johnson*

No. 20-1253

- 2 -

v. United States, 576 U.S. 591, 597 (2015) (invalidating the “residual clause” of the Armed Career Criminal Act, 18 U.S.C. § 924(e)).

Before we may grant a request to file a second or successive § 2255 motion, a movant must make a prima facie showing that the movant’s proposed claims rely on:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h); *see also* 28 U.S.C. § 2244(b)(3)(C).

West’s motion does not satisfy either of these requirements. First, West does not purport to rely on newly discovered evidence. *See* 28 U.S.C. § 2255(h)(1). Second, West’s reliance upon *Davis*, *Dimaya*, and *Johnson* is misplaced because none of those cases addressed the constitutionality of § 1958, the statute under which West was convicted. Indeed, that statute does not contain a “residual clause.” And West was not convicted of violating 18 U.S.C. § 924(c), the statute affected by *Davis*.

Accordingly, West’s application for authorization to file a second or successive § 2255 motion to vacate his sentence is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk